

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY P. RUIZ, JR.,

No. C 06-5559 SI (pr)

Plaintiff,

**ORDER OF SERVICE**

v.

N. WALKER; et al.,

Defendants.

**INTRODUCTION**

Johnny P. Ruiz, a prisoner now incarcerated at Corcoran State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The complaint is now before the court for initial review under 28 U.S.C. § 1915A.

**BACKGROUND**

The complaint concerns defendants' alleged activity in setting up Ruiz to be assaulted by another inmate when he was incarcerated at Salinas Valley State Prison. The complaint alleges the following:

On September 29, 2005, lieutenant Walker ordered Ruiz to be moved from one administrative segregation ("ad-seg") unit to another ad-seg unit for his alleged involvement in a conspiracy to murder a peace officer. Correctional officer Lonero took Ruiz from his cell under the pretense that Ruiz would be cleaning showers and then told him that he was being moved.

For the Northern District of California

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1 violation was committed by a person acting under the color of state law. See West v. Atkins,  
2 487 U.S. 42, 48 (1988).

3 The Eighth Amendment's prohibition of cruel and unusual punishment requires that  
4 prison officials take reasonable measures for the safety of inmates. See Farmer v. Brennan, 511  
5 U.S. 825, 834 (1994). In particular, officials have a duty to protect inmates from violence at the  
6 hands of other inmates. See id. at 833. A prison official violates the Eighth Amendment only  
7 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious,  
8 and (2) the official is, subjectively, deliberately indifferent to the inmate's safety. See id. at 834.

9 Liberally construed, the allegations of the complaint state a claim under § 1983 for  
10 deliberate indifference to Ruiz's safety in violation of his Eighth Amendment rights. Ruiz has  
11 adequately linked defendants Walker, Sotelo, Aldana, Rocha, and Lonero to his claim.

12 The complaint does not state a claim for relief against defendants Galindo and Ortega,  
13 whose alleged involvement consisted of assisting in stopping a cell fight. Even if these  
14 defendants did not properly document the cell fight, the lack of documentation cannot be said  
15 to have caused the already-completed attack on Ruiz.

16 The complaint also does not state a claim for relief against defendant Lauber, who did the  
17 medical evaluation. Even if Lauber later changed the medical evaluation form, that cannot be  
18 said to have caused the already-completed attack on Ruiz. Ruiz cannot overcome the timing  
19 problem by alleging a conspiratorial cover-up. A mere allegation of conspiracy without factual  
20 specificity is insufficient. Johnson v. California, 207 F.3d 650, 655 (9th Cir. 2000) (quoting  
21 Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 626 (9th Cir. 1988)), reversed on  
22 other grounds by Johnson v. California, 125 S. Ct. 1141 (2005).

## 23 24 CONCLUSION

25 For the foregoing reasons,

26 1. Plaintiff's complaint states a claim for relief under 42 U.S.C. § 1983 against  
27 defendants Walker, Sotelo, Aldana, Rocha, and Lonero. Defendants Galindo, Ortega and Lauber  
28 are dismissed from this action.

2. The clerk shall issue summonses and the United States Marshal shall serve, without prepayment of fees, the summons, a copy of the amended complaint and a copy of this order upon the following five defendants, all of whom apparently are employed at Salinas Valley State Prison:

- N. Walker (correctional lieutenant)
- A. Sotelo (correctional sergeant)
- D. Aldana (correctional officer)
- D. Rocha (correctional officer)
- C. Lonero (correctional officer)

3. In order to expedite the resolution of this case, the following briefing schedule for dispositive motions is set:

a. No later than **March 2, 2007**, defendants must file and serve a motion for summary judgment or other dispositive motion. If defendants are of the opinion that this case cannot be resolved by summary judgment, they must so inform the court prior to the date the motion is due.

b. Plaintiff's opposition to the summary judgment or other dispositive motion must be filed with the court and served upon defendants no later than **April 6, 2007**. Plaintiff must bear in mind the following notice and warning regarding summary judgment as he prepares his opposition to any summary judgment motion:

The defendants may make a motion for summary judgment by which they seek to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case. [¶] Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial. (See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).)

c. If defendants wish to file a reply brief, they must file and serve the reply

1 brief no later than **April 20, 2007**.

2 4. All communications by plaintiff with the court must be served on a defendant's  
3 counsel by mailing a true copy of the document to defendant's counsel. The court may disregard  
4 any document which a party files but fails to send a copy of to his opponent. Until a defendant's  
5 counsel has been designated, plaintiff may mail a true copy of the document directly to  
6 defendant, but once a defendant is represented by counsel, all documents must be mailed to  
7 counsel rather than directly to that defendant.

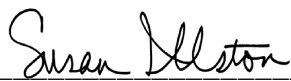
8 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
9 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is  
10 required before the parties may conduct discovery.

11 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
12 court informed of any change of address and must comply with the court's orders in a timely  
13 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
14 pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of  
15 address in every pending case every time he is moved to a new facility.

16 7. Plaintiff is cautioned that he must include the case name and case number for this  
17 case on any document he submits to this court for consideration in this case.

18 IT IS SO ORDERED.

19 Dated: December 18, 2006

  
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SUSAN ILLSTON  
United States District Judge